

### REMARKS

In view of the following remarks, Applicant respectfully requests  
5 reconsideration and allowance of the subject application. This Response is believed  
to be fully responsive to all issues raised in the September 15, 2010 Office Action.

To address objections to multiple dependent claims, claims 4, 5, 8, 9, 11, 13,  
14, 18, 19, 22, 23, 25, 27 and 29 are currently amended solely as to dependencies.  
Claims 1-29 are pending.

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#### Acknowledgement of Formalities

In the pending Office Action of September 15, 2010, at item 1, page 2, the  
Office acknowledges entry of Applicant's Preliminary Amendment filed on March 30,  
2006 ("Enclosure of January 16, 2006"). Of claims 1-29 in Applicant's Preliminary  
15 Amendment, independent claims 1 and 15 recite a catalyst body held by a cradle  
having a plate.

#### Substitute Specification including Abstract

Applicant submits herewith a marked-up version of the specification to show  
20 amendments as requested by the Office in the pending Office Action of September  
15, 2010 and a clean substitute specification. Applicant submits that the  
amendments to the specification as shown in the marked-up version and as included  
in the clean, substitute specification do not introduce new matter (no new matter).

The abstract is amended to delete the phrase "comprises" and replace it with  
25 "includes". Other amendments to the specification insert headings, delete  
references to specific claims and delete the phrase "comprise" or "comprises",  
replaced by "include" or "includes". Further, the description of the drawings has  
been presented prior to the Detailed Description.

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### Objections to the Claims

In the pending Office Action, the Office objects to claims 4-14 and 18-29 under 37 CFR §1.75(c) as being in improper form (multiple dependent claims). In response, Applicant currently amends dependent claims 4, 5, 8, 9, 11, 13, 14, 18, 19, 22, 23, 25, 27 and 29. Applicant submits that the objected to claims are now in condition for examination on the merits.

### Rejections of the Claims

In the pending Office Action, the Office rejects claims 1-3 and 15-17 under 35 USC §102(b) as being anticipated by Pelters et al. (US Patent No. 5,058,380).

### *Standards*

Per MPEP §2131: "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." "The identical invention must be shown in as complete detail as is contained in the ... claim."

Per Trintec Indus., Inc. v. Top-U.S.A. Corp., 295 F.3d 1292, 1296 (Fed. Cir. 2002): "The difference between a printer and a photocopier may be minimal and obvious to those of skill in this art. Nevertheless, obviousness is not inherent anticipation. Jones v. Hardy, 727 F.2d 1524, 1529, 220 USPQ 1021, 1025 (Fed. Cir. 1984) ('though anticipation is the epitome of obviousness, [they] are separate and distinct concepts')."

### *Pelters Reference (US 5,058,380)*

The Pelters reference is directed to a movable catalyst 4, which is shown in Figs. 1, 2, 3 and 4. Fig. 1 shows the movable catalyst 4 attached to an adjusting device 6 for controlling entry and exiting of the catalyst (col. 2, lines 1-5). At col. 2, lines 15-16, the Pelters reference states: "The catalyst 4 can be made of metal or ceramics".

Fig. 2 shows the top of the catalyst 4 fastened to a guide rod 13 (col. 2, lines 17-18). At col. 2, lines 34-40, the Pelters reference states:

5 The chamber 5 is constructed such that it can fully accommodate the catalyst 4 and surrounds it with a narrow gap 24. Since in this moved-out position, the bottom 25 of the catalyst 4 covers the exhaust pipe 3 from above, no noticeable swirl is created in the exhaust gas flow and no resulting additional loss of pressure occurs. (emphasis added)

Accordingly, the Pelters reference describes a movable catalyst where “the bottom 25 of the catalyst 4 covers the exhaust pipe 3 from above”.

10 *Response to Rejections*

Independent claims 1 and 15 recite, in part:

15 *said catalyst body (1) is held by a cradle (5) having a plate (2, 3), and said active catalyst position (35) is provided in an exhaust passage the inner wall of which is in alignment with the plate (2, 3) when the catalyst body (1) is moved in its inactive catalyst position.*

In rejecting the claims, at item 6, pages 3-4, the Office states:

20 Pelters et al. disclose an internal combustion engine . . . characterized in that the catalyst body (4) is held by a cradle (a space within the plate (25)) having a plate (25), and the active catalyst position is provided in an exhaust passage, the inner wall of which is in alignment with the plate (25) when the catalyst body (4) is moved from its inactive catalyst position (5), as clearly shown in Figure 2.

25 Applicant respectfully disagrees. As to item 25, the Pelters reference explicitly states: “the bottom 25 of the catalyst 4”. The Pelters reference states that the catalyst 4 can be made of metal or ceramics (col. 2, lines 15-16). The view of Fig. 2 appears to merely show a cross-section of the bottom 25 of the catalyst 4.

30 As stated above (*Standards*), “The difference between a printer and a photocopier may be minimal and obvious to those of skill in this art. Nevertheless, obviousness is not inherent anticipation”. As the Pelters reference does provide evidence sufficient to disclose (i) a catalyst body and (ii) a cradle having a plate, as claimed, Applicant submits that the independent claims 1 and 15 are not anticipated by the Pelters reference.

35 Applicant further notes that in absence of the catalyst 4, the exhaust pipe 3 of the Pelters reference would be open to the lateral chamber 5 and allow for exhaust gas flow to the chamber 5 because there is no separate cradle having a plate. Yet

further, as described in the instant application, as filed at page 3, second paragraph: “the cradle itself advantageously adapts the shape of the catalyst body to the shape of the catalyst housing, which both are formed according to different requirements”.

As the system of the Pelters reference relies on a catalyst 4 only, the catalyst 4 itself  
5 must conform to the exhaust pipe 3 and the lateral chamber 5.

*Dependent Claim 2*

Dependent claim 2 recites: “*The variable position catalyst according to claim 1, wherein the plate (2, 3) is disc-shaped.*” A disc-shaped plate allows for a  
10 cylindrical catalyst chamber (see, e.g., Application, as filed, at page 7, second paragraph). Such subject matter is not disclosed by the Pelters reference.

*Dependent Claim 5*

Dependent claim 5 recites: “*The variable position catalyst according to claim 1, wherein the cradle (5) is connected to the actuator member (9) by an actuator rod (10).*” As the Pelters reference does not provide sufficient evidence of a cradle, the  
15 subject matter of claim 5 is not disclosed.

*Dependent Claim 6*

Dependent claim 6 recites: “*The variable position catalyst according to claim 5, wherein the catalyst housing (7) has a cylindrical inner shape and the cradle (5) has a cylindrical outer shape, the inner diameter of the catalyst housing (7) fitting to the outer diameter of the cradle (5).*” A disc-shaped plate allows for a cylindrical  
20 catalyst chamber (see, e.g., Application, as filed, at page 7, second paragraph).  
25 Such subject matter is not disclosed by the Pelters reference.

*Dependent Claim 7*

Dependent claim 7 recites: “*The variable position catalyst according to claim 5 or 6, wherein the cradle (5) comprises two disc-shaped plates (2, 3) between which the catalyst body (1) is held.*” Applicant fails to find evidence of such cradle in  
30 the Pelters reference.

*Dependent Claim 13*

Dependent claim 13 recites: “*The variable position catalyst according to claim 5, wherein the cradle (5) comprises a leading edge (13a) which is always in contact with a portion of the catalyst housing (7) providing the inactive position (14).*”

5       At col. 2, lines 34-36, the Pelters reference states: “The chamber 5 is constructed such that it can fully accommodate the catalyst 4 and surrounds it with a narrow gap 24.” Accordingly, the Pelters reference does provide evidence of a cradle that includes a leading edge in contact with a portion of a catalyst housing.

10    *Dependent Claim 14*

Dependent claim 14 recites: “*The variable position catalyst according to claim 1, wherein the variable position catalyst is provided upstream of a turbocharger of an engine.*” Applicant submits that the Pelters reference does not provide evidence of such subject matter.

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*Dependent Claims 16, 19, 20, 21, 27 and 29*

Applicant submits that the Pelters reference does not provide evidence sufficient to support an anticipation rejection of any of claims 16, 19, 20, 21, 27 or 29, for at least some of the same reasons provided above.

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*Dependent Claims 3, 4, 8-12, 17, 18, 22-26 and 28*

Applicant submits that dependent claims 3, 4, and 8-12 are not anticipated by the Pelters reference for at least the same reasons as claim 1. Applicant submits that dependent claims 17, 18, 22-26 and 28 are not anticipated by the Pelters  
25   reference for at least the same reasons as claim 15.

Conclusion

Claims 1-29 are pending and believed to be in condition for allowance. Applicant respectfully requests reconsideration and prompt issuance of the present  
30   application. Should any issue remain that prevents immediate issuance of the

application, the Examiner is encouraged to contact the undersigned attorney to discuss the unresolved issue.

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Respectfully Submitted,

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